

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

September 17, 2013 at 1:30 p.m.

1. 13-28431-C-13 KHALID KHAN MOTION FOR RELIEF FROM
 NJJ-1 Robert McCann AUTOMATIC STAY AND/OR MOTION
 FOR ADEQUATE PROTECTION
 8-30-13 [38]

U.S. BANK NATIONAL
ASSOCIATION VS.

Local Rule 9014-1(f) (2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 30, 2013. 14 days' notice is required. This requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

U.S. Bank National Association seeks relief from the automatic stay with respect to the real property commonly known as 611 16th Street, Sacramento, California. The moving party has provided the Declaration of John M. Ryan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. The Ryan Declaration, dated August 20, 2013, states that the Debtor has not made 1 post-petition payment, with a total of \$4,379.64 in post-petition payments past due. Debtor's loan has been in default "for some time" due to Debtor's missing payments due under the Note and Deed of Trust. Ryan Decl., ¶7.

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From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$451,326.25 (excluding attorneys fees, which are provided for below), as stated in the Ryan Declaration, while the value of the property is determined to be \$316,000, as stated in Schedules A filed by Debtor. U.S. Bank challenges Debtor's valuation, however, and obtained an appraisal of the subject property on October, 2012. The appraisal stated the value of the property to be \$350,000 as of October 23, 2012.

Calculations using either figure show that Debtor is lacking equity in the property. U.S. Bank further states that there are other liens encumbering the property, totaling \$6,953.97, for unpaid utility charges, unpaid property taxes, an equity line of credit deed of trust, and a State Board of Equalization lien. Additionally, U.S. Bank claims that based on Debtor's monthly income, which is listed as \$1,200 on his schedules, that he is unable to service the monthly debt for the loan, the payments for which are \$4,289.82 a month. Debtor has not demonstrated the ability to reorganize. U.S. Bank also submits that, based on Debtor's inability to make normal and periodic cash payments on the loan, Debtor is unable to provide adequate protection to U.S. Bank.

The court shall issue a minute order terminating and vacating the automatic stay to allow U.S. Bank National Association, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Additionally, the moving party has alleged adequate facts and present sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a) (3).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow U.S. Bank, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 611 6th Street, Sacramento.

IT IS FURTHER ORDERED that the fourteen (14) day stay of

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enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

2. [13-27880](#)-C-13 HORMOZ RAD AND PARVANEH MOTION FOR RELIEF FROM
MJD-1 VAKILI AUTOMATIC STAY
Peter G. Macaluso 8-19-13 [[31](#)]
LLOYD ACOSTA VS.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 14, 2013. 28 days' notice is required. This requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Movant, Lloyd R. Acosta Jr., seeks relief from the automatic stay arising from Debtor's Chapter 13 petition, filed on June 10, 2013, to proceed to recover from Debtor's insurance coverage. Movant is the Plaintiff in a pre-petition civil action filed against the Debtor, Parvaneh Vakili. Debtor filed a joint bankruptcy with Hormoz Rad, who is not a party to the civil case.

Movant filed a civil complaint on February 14, 2013, alleging that Debtor ran a traffic signal and collided into Movant's vehicle on November 26, 2010. Movant is claiming personal injuries and property damage to his vehicle, and intends to recover from Debtor's insurance for compensation for damages and injuries related to the accident. Movant will only seek to recover from Debtor's liability insurance policies, and will take no action to recover against other assets of the Debtor's estate other than through the reorganization process and pursuant to the claims procedure established by the court.

Movant argues that relief from the stay will allow civil litigation to proceed, thereby ending the Debtor and Movant's relationship. Additionally, lifting the stay would not interfere with Debtor's estate, as debtor has

insurance coverage in which the carrier has assumed responsibility for defending litigation. Movant also argues that waiting to prosecute his claim will considerably disadvantage his case due to issues related to the preservation and loss of witnesses.

Debtors' "Limited Opposition" to the Motion for Relief

Debtors Vakili and Rad do not oppose Movant's efforts to seek remedies under Vakili's insurance policy and not against Debtors personally.

Discussion

Under 11 U.S.C. § 362(d)(1), the court may grant relief from an automatic stay provided by § 362(a) for "cause." A desire to permit a state action to proceed in a state tribunal has been recognized as a proper cause to grant relief from the automatic stay. See *Piombo Corp. v. Castlerock Props.*, 781 F.2d 159, 163 (9th Cir.1986). More specifically, the court may grant relief for the limited purpose of allowing parties with prepetition claims against a debtor to pursue recovery insurance proceeds. *In re Calsol, Inc.*, 419 F. App'x 753, 754 (9th Cir. 2011).

Movant is seeking relief to proceed in a state civil action, which has been recognized as proper cause pursuant to 11 U.S.C. § 362(d)(1). Movant is seeking relief, precisely for the purpose of pursuing its pre-petition claim against Debtor for damages arising out of a motor vehicle accident. Movant has stated that he will not recover from Debtor's estate, but rather pursue Debtor's liability insurance carrier to recover insurance proceeds.

Thus, Movant has made a sufficient showing of cause for relief from the automatic stay.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay imposed by 11 U.S.C. § 362(a) be vacated to permit Lloyd R. Acosta, Jr. to proceed in his civil court action against Debtors' liability insurance carriers for injuries and damages arising out of the parties' motor vehicle accident on November 26, 2010.

No other or additional relief is granted.